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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Third periodic reports of States parties due in 1991

Addendum

SRI LANKA*

[18 July 1994]

Article 1

1. Article 1 of the Covenant sets forth the right to self-determination.

2. Sri Lanka regained her independence from colonial rule in 1948 and became a member of the United Nations in 1955, subscribing to the purposes and principles of the Charter of the United Nations. It is the position of the Government of Sri Lanka that the words "the right to self-determination" appearing in this article apply only to people under alien and foreign domination and these words do not apply to sovereign independent States or to

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* For the initial report submitted by the Government of Sri Lanka, see CCPR/C/14/Add.4 and Add.6, for its consideration See CCPR/C/SR.471 to 473 and SR.477, or Official Records of the General Assembly, Thirty-ninth session, Supplement No. 40 (A/39/40), paragraphs 95 to 135. For the second periodic report of Sri Lanka, see CCPR/C/42/Add.9, and for its consideration by the Committee see CCPR/C/SR.1057 to SR.1060, or Official Records of the General Assembly, Forty-sixth session, Supplement No. 40 (A/46/40), paragraphs 454 to 491. The information submitted by Sri Lanka in accordance with the guidelines concerning the initial part of reports of States parties is contained in the core document (HRI/CORE/1/Add.48).

a section of a people or nation. It is well recognized in international law that the principle of self-determination cannot be construed as authorizing any action which would dismember or impair totally or in part the territorial integrity or political unity of sovereign and independent States. This article of the Covenant cannot therefore be interpreted to connote the recognition of the dismemberment and fragmentation of States on ethnic and religious grounds. Such an interpretation would clearly be contrary, inter alia, to General Assembly resolution 2625 (XXV) on the Declaration of Principles of International Law and incompatible with the purposes and principles of the Charter.

Article 2

3. Article 2 of the Covenant states that all individuals should be assured of the rights in the Covenant without distinction on grounds of race, colour, sex, language, religion etc. Each State Party has to ensure that any person whose rights are violated should have an effective remedy.

4. Article 12 (2) of the Constitution of Sri Lanka provides that no citizen shall be discriminated against on the grounds of race, caste, sex, language, religion political opinion, place of birth, etc., and article 12 (3) of the Constitution states that no person shall be subject to any social disability on any one of such grounds.

5. Further provision has been made under article 12 (4) of the Constitution of Sri Lanka which enables special provisions to be made by law for subordinate legislation or executive action for the advancement of women, children or disabled persons.

6. Under Article 17 of the Constitution of Sri Lanka a person whose rights are affected by any executive or administrative action can apply to the Supreme Court, which is the highest and the final court in the Republic. The Supreme Court has sole and exclusive jurisdiction to hear and determine any question relating to fundamental rights and article 126 of the Constitution provides for the Supreme Court to grant such relief or make such directions as it may deem just and equitable.

7. Article 2, (para. 3 (a)) of the Covenant requires inter alia that a State Party to the Covenant ensure that any person whose fundamental rights or freedoms are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

8. The Supreme Court of Sri Lanka is vested with the sole and exclusive jurisdiction to hear and determine any question relating to the infringement or the imminent infringement by executive or administrative action of any fundamental rights or language right declared and recognized in Chapter III or Chapter IV of the Constitution of Sri Lanka.

9. The Commission for the Elimination of Discrimination and Monitoring of Fundamental Rights Regulations of 1986 has also been established. It consists

of not more than 10 members, appointed by the President in consultation with the Chief Justice. They are required to be persons competent and experienced in the disciplines of law, medicine, science, engineering, banking, administrative or social service. The present Chairman of the Commission is a retired judge of the Supreme Court of Sri Lanka. The Commission is mandated to eliminate unjust discrimination on the grounds of race, religion, language, caste, sex, political opinion or place of birth, by the Government, a public corporation, a local authority, a business undertaking owned by the Government or any public company in which the Government has more than 50 per cent of the share holding.

10. The object of the Commission is to work towards the elimination of unlawful discrimination and to monitor the observance of fundamental rights. For this purpose its members may:

(a) Study and investigate complaints of discrimination and hold public or private hearings;

(b) Receive, investigate and grant relief by mediation or other appropriate means;

(c) Take action by way of conference, mediation and conciliation on a referral by the Supreme Court of an alleged act of discrimination or an infringement of a fundamental right.

11. During the period of a little more than four years of its work, the Commission and the Director of Human Rights, appointed by the President, have been able to bring about settlements in a large number of complaints of discrimination. The Commission has confined itself to hearing appeals on decisions of the Director or looking into the cases referred to it by the Director, where the Director cannot bring about a settlement.

12. During the period 1 January 1988-31 December 1989 the matters referred to the Commission by the Supreme Court have been settled out of court, to the satisfaction of the respective parties. The procedure before the Commission, or the Director of Human Rights, has been found to be an inexpensive, informal and expeditious means of settling such complaints.

13. When the Supreme Court has referred matters for mediation and conciliation by the Commission, the respondents to the complaints have been represented and the eventual settlement arrived at has been to the satisfaction of the respective parties.

Article 3

14. Article 3 of the Covenant ensures equal rights for men and women. This right is vouchsafed in the Constitution of Sri Lanka. Under article 12 (2) and 12 (3) of the Constitution, no citizen shall be discriminated against or be subject to any social disability on grounds of sex.

15. Sri Lanka's commitment to non-discrimination against women was further reiterated when Sri Lanka ratified, on 5 October 1981, the Convention on the Elimination of All Forms of Discrimination against Women, which had been adopted by the General Assembly of the United Nations in 1979. The Convention entered into force for Sri Lanka on 4 November 1981.

16. The Commission for the Elimination of Discrimination and Monitoring of Fundamental Rights Regulations of 1986 decided in February 1989 to enter into a study of the law and practice with regard to the elimination of discrimination against women in Sri Lanka. A report on this study based on research done by some members of the Center for Women's Research has been published. During the period January 1988-31 December 1989 of a total of 2,204 complaints, 1,441 were settled, 402 complaints were found misconceived, 47 were time barred, 119 were not pursued, 4 were withdrawn, 82 were laid by and 109 were proceeding.

17. The Director of Human Rights stated in his report that "this institution has proved to be an inexpensive and convenient way of granting relief to the victims of discrimination.".

18. Equality between the sexes is guaranteed in education, employment and in political participation.

Education: Student enrolment in universities				
Year	Total	Male	Female	% Female
1942	904	813	91	10.1
1950	2 036	1 655	381	18.7
1960	4 723	3 587	1 136	24.1
1970	11 813	6 570	5 243	44.4
1980	17 494	10 544	6 950	39.7
1990	31 447	17 926	13 521	42.9

Source: University Council Reports
University of Sri Lanka
University Grants Commission

Employment: Labour force estimates

Title of Survey	Labour force estimate (thousands)			Crude participation rate		
	Total	Male	Female	Total	Male	Female
Census of Population 1946	2 611	2 041	570	39.2	57.8	18.2
Census of Population 1953	2 993	2 268	724	37.0	53.1	18.9
Census of Population 1963	3 464	2 742	722	32.7	49.8	14.2
Labour Force Survey 1968	4 150	3 156	994	34.6	50.7	17.2
Socio-Economic Survey 1969/70	4 169	3 124	1 045	38.6	57.3	19.5
Census of Population 1971	4 488	3 312	1 176	35.4	50.7	19.1
Survey of Labour Force Participation Rates 1973	4 560	3 267	1 293	34.4	48.3	20.2
Land and Labour Utilization Survey 1975	4 957	3 490	1 467	36.5	50.2	22.1
Socio-Economic Survey 1980/81	5 715	4 109	1 606	37.3	53.1	21.2
Socio-Economic Survey 1985/86	5 962	4 038	1 924	49.4	67.8	31.5

Political participation		Members of Parliament and Ministers in the 9th Parliament as of 31 December 1991			
Category	Total No.	Male		Female	
		No.	%	No.	%
Members in Cabinet	206	194	94.13	12	5.87
Ministers	24	23	95.83	1	4.17
Ministers not in Cabinet	23	21	91.03	2	8.7
Ministers of State	29	26	89.66	3	10.34
All Ministers	76	70	92.11	6	7.89

Proportion of male MPs holding office: 36%
Proportion of female MPs holding office: 50%

Source: Parliament

Members elected to provincial councils			
Year	Total	Female	%
1989	437	13	2.97
1993	383	14	3.6

Participation in political life by women

19. Universal adult franchise, operating since 1931, has ensured free and unhindered participation by women in the nation's political institutions. Women are represented in the National Parliament, the Cabinet of Ministers and local bodies. Posts of mayors in major cities are also held by women. The post of Chief Minister of the Western Province, the largest of the provinces, is held by a woman.

20. Sri Lanka had the privilege of electing the world's first woman Prime Minister. She was re-elected and contested the last presidential election and currently is the leader of the opposition in the National Parliament.

Articles 4 and 5

21. Article 4 of the Covenant provides for the possibility of departing from various provisions of the Covenant except the non-derogable article specified in paragraph 4.2 in time of public emergency which threatens the life of the nation, and the existence of which is officially proclaimed. Article 5 stipulates, inter alia, that none of the provisions should preclude the recognition of fundamental human rights by a State Party pursuant to law, conventions, regulation or custom on the basis that the Covenant does not recognize such rights or that it recognizes them to a lesser extent.

22. Article 15 of the Constitution specifies restrictions in the exercise of the fundamental rights declared and recognized in articles 13 and 14 of the Constitution. The restrictions stipulated in article 15 are only those that are prescribed by law in the interests of national security. The corresponding provisions in the Constitution of Sri Lanka which safeguard the specific rights which cannot be derogated from are set out under articles 6, 7, 8, 11, 15, 16 and 18 in this report.

23. The freedoms of speech, peaceful assembly, association, engaging in any lawful occupation, trade or enterprise, and of movement and choosing one's residence in Sri Lanka, may be subjected by law to certain restrictions in the interest of racial and religious harmony or national economy. The right to equality, the requirement that a person arrested should be produced before a competent court within a prescribed time and the freedoms of speech, peaceful assembly, association, forming of trade unions, practising a religion, engaging in a lawful occupation, freedom of movement and the right to return, can also be subjected to certain restrictions by law in the interest of national security, public order, the protection of public order or morality, or for the purpose of seeking recognition of the rights of others or meeting the just requirements of a democratic State.

24. The principal legal provisions relating to public security are contained in the Public Security Ordinance No. 25 of 1947 as amended and also in Chapter XVIII of the Constitution.

25. The Constitution of Sri Lanka contains fundamental safeguards against the arbitrary use of emergency powers. Article 155 of the Constitution ensures that the power to make emergency regulations under the Public Security

Ordinance shall not come into operation except upon the making of a proclamation. It also guarantees parliamentary control of a declaration of emergency by requiring such proclamation to be forthwith communicated to Parliament.

26. Article 155 of the Constitution contains detailed procedures providing for effective control by Parliament of a proclamation of emergency. It requires Parliament to meet within 10 days of the making of a proclamation. The proclamation is further required to be approved by a resolution of Parliament and unless so approved, it will expire after a period of 14 days. A proclamation will be in operation for a period of 30 days and no proclamation made within the 30 days next ensuing shall come into operation until approved by a resolution of Parliament. Where a proclamation has been in operation for a period of 90 consecutive days, or a period of 90 days in the aggregate during 6 consecutive calendar months, it will not be in operation for more than 10 days unless such proclamation is approved by a resolution of Parliament.

27. Article 155 of the Constitution therefore provides an effective safeguard against the arbitrary extension of emergency powers.

28. Under the Emergency Regulations, where the Secretary to the Ministry of Defence is of the opinion with respect to any person that it is necessary to prevent such person from acting in any manner prejudicial to the national security or to the maintenance of public order or to the maintenance of essential services or from acting in any manner so as to promote sedition and incitement, the Secretary is empowered to make an order to take such person into custody and to be detained in such custody. Such person may be so detained for a period not exceeding 30 days. There is also provision under the Emergency Regulations for the Secretary to the Ministry of Defence to make supervision and restriction orders in respect of a suspected person.

29. An important safeguard under the Emergency Regulations is the establishment of an advisory committee enabling any person aggrieved by an order made against him under the Emergency Regulations to make his objections to such committee. It is the duty of the Secretary of the Ministry of Defence to secure that any persons against whom an order under the Emergency Regulations has been made shall be afforded the earliest practicable opportunity of making representations to the President with regard to the Advisory Committee, to inform a suspect of the grounds on which an order under the Emergency Regulations has been made against him and to furnish him with particulars sufficient to enable him to present his case. Once the report of the Advisory Committee is submitted to the Secretary of the Ministry of Defence, he may, after consideration, revoke the order to which the objection relates.

30. Against the background of attempts by various organized groups to commit serious acts of violence in the aftermath of the presidential election in October 1982, a state of public emergency applicable throughout Sri Lanka was officially proclaimed on 20 October 1982 which ended on 19 January 1983. The state of emergency was reintroduced throughout Sri Lanka on 18 May 1983 in view of widespread acts of terrorism by certain extremist groups agitating for

a separate State in the Northern and Eastern Provinces of Sri Lanka. The state of emergency so proclaimed ended on 11 January 1989. Due to the escalation of violence after the parliamentary election in February 1989 a state of emergency was again proclaimed on 20 June 1989.

31. Attacks by terrorist groups have included planting bombs in buses, aircraft and at bus terminals during rush hour, major bank robberies, attacks on police stations and setting fire to public property, including trains and government vehicles. Police officers and servicemen, politicians, persons who volunteered evidence and civilians have been killed in this wave of violence. The upsurge of violence resulted in a situation of grave public emergency in Sri Lanka, which threatened the normal life of the nation.

32. The emergency that was proclaimed was strictly required by the exigencies of the situation. It is not inconsistent with Sri Lanka's obligations under international law and it does not involve discrimination solely on the grounds of race, colour, sex, language, religion or social origin.

Article 6

33. Article 6 of the Covenant provides that every one has a right to live, that the death penalty may be imposed only for serious offences in accordance with the law in force at the time of the commission of the offence, that this article shall not be construed as derogating from obligations under the Convention on the Prevention and the Punishment of the Crime of Genocide, that a person sentenced to death has a right to seek pardon or commutation of sentence, that the death sentence shall not be passed on persons below 18 years of age and shall not be carried out on pregnant women, and, that the Covenant shall not be reason for delaying the abolition of capital punishment.

34. Article 13.4 of the Constitution of Sri Lanka specifies that no person shall be punished with death or imprisonment except by order of a competent court. The crimes punishable by death are murder (section 296 of the Penal Code) treason (section 114 of the Penal Code) abetment of suicide (section 299 of the Penal Code) or drug related offences (section 54 A of the Poisons, Opium and Dangerous Drugs (amendment) Act No. 13 of 1984).

35. Under the Provisions of the Emergency (Miscellaneous Provisions and Powers) Regulation No. 1 of 1993, any person who,

(a) Causes or attempts to cause death or injury to any person with the object of dissuading such persons or any other person from residing in any area or of instilling terror amongst the inhabitants of the area; or

(b) Kidnaps, abducts or commits any attack upon any other person which act would under the provisions of the Penal Code be punishable with death or a term of imprisonment of not less than seven years with the intention of compelling such other person to wage war against the Republic or for such other person having refused to wage war against the Republic; or

(c) Causes or attempts to cause death or injury to any person or damage to any property by the use of any firearm, offensive weapon or explosive device at any public place or any place where the public usually collect or frequent; or

(d) Commits the offence of robbery or extortion with the intention of, or under such circumstances that it is likely that such offence was committed for the purpose of, collecting funds for waging war against the Republic; or

(e) Does any act which causes the destruction of or damage to property whether movable or immovable or any such change in any such property as destroys or diminishes its value or utility with the object of hindering any person residing in any area; or

(f) Is a member of any unlawful assembly as defined in section 138 of the Penal Code the object of which assembly is to do any act referred to in subparagraphs (a), (b), (c), (d) or (e) above, shall be guilty of an offence and notwithstanding anything in the Penal Code or in these regulations shall on conviction thereof before the High Court be liable to suffer death or imprisonment for a period of not less than 5 years and not exceeding 20 years.

36. With regard to the right to seek pardon or commutation of a sentence, article 34 of the Constitution gives the President the right to grant a pardon. The law provides that no person below the age of 18 years may be sentenced to death (section 53 of the Penal Code read with section 281 of the Code of Criminal Procedure Act No. 15 of 1979). The Sri Lanka law also provides that sentence of death shall not be pronounced or recorded against any woman who is pregnant at the time of her conviction (section 54 of the Penal code). The imposition of the death penalty in the cases of murder and abetment of suicide by a judge of the trial court is mandatory, while the imposition of the death penalty for treason and drug related offences is not mandatory. In the circumstances any person convicted of murder or abetment of suicide has to be sentenced to death. Though the death penalty has not been removed from the statute books and several persons have been sentenced to death, the death sentence has not been carried out since July 1977, and sentences of death are commuted to life imprisonment.

37. The right of appeal to the Court of Appeal and thereafter to the Spreme Court is available to the convicted person. Further, even if the appeal is unsuccessful, the law requires the trial judge imposing the sentence of death to forward a report to the President with his recommendations. Since 1977, the President has invariably exercised his power to stay the execution and commute the sentence to life imprisonment.

38. Sri Lanka is a party to the Convention on the Prevention and Punishment of the Crime of Genocide, and no derogation from its obligations is permitted under this Covenant.

Article 7

39. Article 7 of the Covenant states that no one shall be subject to torture or to inhuman treatment or punishment, and that no person shall be subject to medical experimentation without his free consent.

40. Article 11 of the Constitution of Sri Lanka stipulates it a right that no one shall be subject to torture, inhuman or degrading treatment or punishment. The Ethical Review Committee established under the Ministry of Health requires all scientific research and scientific experimentation involving human beings to be approved by that Committee. It will not permit any such experimentation unless the prior consent of the individual concerned is obtained.

41. The Supreme Court of Sri Lanka in the exercise of its Fundamental Rights Jurisdiction is empowered to examine complaints of torture, cruel, inhuman or degrading treatment or punishment. When, on receipt of a complaint the Supreme Court grants the petitioner leave to proceed against the police or service personnel under article 11 which guarantees the right not to be tortured, or to be subjected to cruel, inhuman or degrading treatment or punishment, the Attorney General does not appear for the respondents named by the petitioner. The respondent, police or service personnel have to retain counsel to appear on their behalf. In cases where the Supreme Court has held that the fundamental rights of the petitioner guaranteed by article 11 have been violated, it has awarded compensation to the petitioner.

42. In certain cases the Supreme Court in the exercise of its powers "to grant such relief or make such directions as it may deem just and equitable in the circumstances" (art. 126 (4)), has ordered appropriate action against the respondents.

43. In Wimal Vidyamani v. Lt. Col. L.E.P.W. Jayatilleke & Others (S.C. Application 852/91 (spl)), the Supreme Court awarded a sum of Rs. 20,000 as compensation to the petitioner for the infringement of his rights under article 11 and also directed the Inspector General of Police to take appropriate action. In pursuance of this order, investigations had been conducted by the police and two cases have been filed in the Magistrate Court against seven police personnel for committing the offences of (i) abduction with intention to wrongfully confine; and (ii) wrongful confinement.

44. In a number of other cases disciplinary inquiries have resulted in administrative action against the personnel concerned.

45. The Government of Sri Lanka has further reiterated its commitment to freedom from torture or cruel, inhuman or degrading treatment or punishment by depositing with the Secretary-General of the United Nations, on 2 September 1982, a declaration of its intention to comply with the Declaration on the Protection of All Persons from Being Subjected to torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975 (resolution 3452 (XXX)). Sri Lanka has acceded to the Convention Against Torture by depositing its instrument of accession with the Secretary-General of the United Nations on 3 January 1994. The Convention entered into force for Sri Lanka on 2 February 1994.

46. Every person admitted to prison would be examined by a doctor who would record his observations and such record would serve as a reference to check whether the condition of the prisoner has deteriorated in any manner whilst he is in detention. The detainee is then informed of his rights and duties as a detainee, including his right to complain about any ill-treatment whilst in custody.

47. The Emergency Regulations also require the magistrate having jurisdiction over the area where the prison is situated to visit the prison at regular intervals and to record any complaints from a detainee.

48. Under the Prisons Ordinance, the Minister of Justice appoints a Board of Prison Visitors, empowered to visit any prison in the island to examine conditions, hear complaints of inmates and make appropriate recommendations to the authorities. A local Prison Visitors' Committee, composed of persons not holding office, is similarly appointed for each prison. Visits by this committee usually take place on a weekly basis.

49. The Prison Ordinance also authorizes a magistrate to visit a prison at any time and to question any detainee.

50. In July 1990, the Government of Sri Lanka signed an agreement with the International Committee of the Red Cross (ICRC) to enable it to commence humanitarian functions in Sri Lanka in association with the country's concerned authorities. Since then, the staff of the ICRC delegation has increased to about 65 persons who are active throughout the country. Members of the delegation are granted free access to all places of detention, which include prisons, police stations, detention centres and rehabilitation centres, in order to ensure that internationally accepted norms for the safety and the wellbeing of inmates are maintained.

51. Delegates of ICRC would examine the living conditions of detainees, their treatment at the hands of the authorities, welfare facilities, food and other matters. ICRC records any complaints and, after investigation, these are conveyed in detailed periodic reports to the Sri Lankan Government. The Government considers them at the highest political level with a view to implementing the recommendations where called for.

Article 8

52. Article 8 of the Covenant calls upon States to prohibit slavery and provides that no one shall be required to perform compulsory labour except when undergoing a term of imprisonment.

53. Slavery was abolished in Sri Lanka as far back as 1844, by the Abolition of Slavery Ordinance No. 20 of 1844.

Article 9

54. Article 9 of the Covenant provides that every one has a right to liberty and freedom from arrest except under due process of law, that a person arrested shall be informed at the time of his arrest of the reasons for

arrest, that any arrested person shall be brought before a judge or competent officer promptly and tried within a reasonable time, and that any one who is the victim of unlawful arrest shall have the right to compensation.

55. Article 13 of the Constitution of Sri Lanka provides that no person shall be arrested except according to the procedure established by law; and his further detention will be determined by a judge. The Code of Criminal Procedure of Sri Lanka provides that a person arrested shall be produced before a magistrate within 24 hours of the time of his arrest.

56. The Supreme Court in the exercise of its powers under the fundamental rights jurisdiction has examined complaints of infringement of rights guaranteed under article 13. Whenever the Court has held that the complaint is justified, compensation has been awarded to the petitioner.

57. In the case of Hewa Kottage Wimal Vidyamani v. Lt. Col. L.E.P.W. Jayatilleke and Others (SC Application No. 852/91 (special)) the Supreme Court held that the rights of the petitioner guaranteed under article 13 had been infringed, and awarded Rs. 15,000 as compensation.

58. In other cases the Supreme Court has examined arrest and detention procedures and awarded compensation whenever the rights of the petitioner had been infringed.

Article 10

59. Article 10 of the Covenant states that a person deprived of his liberty should be treated with humanity, that accused persons should be segregated from convicted persons and juveniles separated from adults, that the penitentiary system should have as its aim reformation and social rehabilitation, and that juvenile offenders should be treated appropriate to their age and legal status.

60. Article 11 of the Constitution of Sri Lanka safeguards a person from inhuman or degrading treatment or punishment. Under section 48 of the Prisons Ordinance of Sri Lanka, juvenile prisoners have to be segregated from adults and convicted prisoners from those awaiting trial wherever possible.

61. The Prison Rules of the Department of Prisons of the Government of Sri Lanka also specify the privileges and facilities to be extended to those awaiting trial. Reformation and social rehabilitation are the philosophy underlying the penitentiary system in Sri Lanka and many programmes are implemented towards this end.

62. The Supreme Court, in the exercise of its fundamental rights jurisdiction, can and does examine allegations of torture and complaints made by detainees. Such complaints may be made either by the detainee or on his behalf.

63. The Court of Appeal has the jurisdiction, when examining the legality of a detention by the procedure of a writ of habeas corpus, to also examine any

allegations of mistreatment whilst in custody. The Court has exercised this jurisdiction in several cases. Any proven act of extrajudicial execution will be treated as an offence of murder.

64. The correctional system of Sri Lanka is geared towards the eventual rehabilitation of all offenders. For this purpose, the welfare and after-care of both prisoners and discharged prisoners form an integral part of the system. While the offender is still in custody, a series of measures are adopted with the objective of ensuring his rehabilitation whereby, after discharge, he will be able to lead a normal law-abiding existence.

65. The Department of Prisons recognizes that admission to a prison is a traumatic experience which leaves a series of ill effects on the offender. Therefore the welfare and the treatment process commences almost immediately after admission to a prison in Sri Lanka. The admission orientation programme is operated by prison welfare officers who are trained social workers. Every newly-admitted prisoner is interviewed by a welfare officer whose job is to find out the immediate problems confronting the offender. If the offender's family is destitute, the welfare officer sets in motion the government machinery to provide aid to the dependents. Until the prisoner's family receives aid from the government agencies through the Department of Social Services, the Prisoners Welfare Association of Sri Lanka gives them an interim allowance for a period of three months.

66. In addition to ascertaining the problems of prisoners' families and organizing financial assistance for their maintenance, the departmental programmes include a large number of welfare measures for prisoners who are still in custody, such as the provision of library, radio and television facilities, recreational and educational programmes and the encouragement of the artistic talents of the prisoner. In Sri Lanka prisoners are allowed regular visits with members of their families and attorneys-at-law. In addition to the normal monthly visit, the prison superintendents are allowed the discretion of permitting any number of special visits in order to ensure that the family unit continues to maintain contact with the offender while he or she is in prison. Prisoners are also allowed to attend funerals or have death-bed visits with blood relations. Long-term offenders are allowed home leave for a period of one week at a time once in six months during the last two years of their sentence. The purpose of all these measures is to ensure the welfare of the prisoner and the family.

67. Programmes for rehabilitation also include vocational education, where prisoners are trained in as many as 22 trades. These vocational educational programmes are designed to ensure that the prisoner will have the necessary skills to find suitable employment on discharge from prison. The cases of prisoners taken into custody in connection with terrorist or subversive activities, and of persons who surrendered under the terms of the amnesty granted by the Government are individually evaluated for purposes of rehabilitation.

68. The Department of Probation and Child Care Services is responsible for the custody and treatment of all offenders below the age of 16 years.

Offenders below the age of 16 years when remanded are detained in remand homes. There are four remand homes operated by the Department of Probation and Child Care Services. In addition to remand homes, there are also 53 approved homes which are supervised by the Department.

69. Offenders below the age of 16 years who are convicted and whose detention in an institution is considered desirable are sent to certified schools which are maintained by the Department of Probation and Child Care Services. The Department has seven certified schools throughout the island. The programmes in these schools include both academic subjects and vocational training.

70. The Department of Prisons administers two borstal institutions for offenders between the ages of 16 and 22. The borstal system is essentially remedial and educational and each establishment is organized in houses of about 60 or 70 youths under their own housemaster. They are taught academic subjects and, in addition, are given vocational training. Both borstal institutions are open institutions with farms attached to them and the inmates are taught agriculture and animal husbandry in addition to receiving training in trades such as carpentry, tinkering, bakery, motor mechanics and masonry. As required for this category of offender, emphasis is placed on recreational activities. They are also encouraged to sit for public examinations. After-care of the young offender is the responsibility of the training school After-Care Association. The inmates of the training school are looked after for a period of one year by the After-Care Association after their discharge from the training school and this is an integral part of the borstal training.

71. Before release all inmates are allowed to go home on leave for five days in order to get in touch with those who will be supervising their after-care and often also with a possible employer. Suitability for release under supervision can commence at any time after the expiration of one year from the commencement of the sentence and in such circumstances after-care supervision continues for three full years. A recent innovation has been the introduction of a scheme of voluntary supervision of discharged offenders by suitable members of the free community. It will be thus observed that the programme covers the treatment as well as the after-care of the offenders for the ultimate purpose of ensuring the reintegration of the offender after he has paid his debt to society.

Article 11

72. Article 11 of the Covenant states that a person shall not be imprisoned merely on the ground of inability to fulfil a contractual obligation.

73. Under the civil law of Sri Lanka which governs contractual obligations, no person can be imprisoned for failure to carry out his obligations under a contract.

Article 12

74. Article 12 of the Covenant provides that, a person has the right to liberty of movement and freedom to choose his country and the freedom to leave his country. It is also stated that these rights can be subject to

restrictions only under the terms of any law that seeks to protect national security or public order and that no one shall be arbitrarily deprived of the right to return to his own country.

75. Article 14 of the Constitution of Sri Lanka provides, inter alia, for the freedom of movement and choosing one's residence within Sri Lanka and the freedom to return to Sri Lanka. These rights, however, are subject to such restrictions as may be prescribed by law in the interests of the national economy, national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others or of meeting the just requirements of the general welfare of a democratic society.

76. A citizen of Sri Lanka cannot be denied a passport to leave the country.

Article 13

77. Article 13 of the Covenant provides that a non-national can be expelled only in pursuance of a decision reached in accordance with the law and that, save where reasons of national security otherwise require, he shall be allowed to submit his reasons against expulsion and to have his case reviewed by a competent authority.

78. Under the Immigrants and Emigrants Act of Sri Lanka, a non-national who enters Sri Lanka illicitly without a visa, or overstays the period of his visa, can be removed from Sri Lanka on a removal order. Before a removal order is made, the Controller of Immigration and Emigration is required to give the person an opportunity of stating any reasons that he may have to plead against such an order being made.

79. With regard to the removal or deportation of aliens, the Immigrants and Emigrants Act of Sri Lanka provides for an order of removal or an order of deportation to be made by the Minister of Defence to whom the subject of immigration and emigration has been assigned. Such order can be contested before the Court of Appeal by invoking its writ jurisdiction. The issuance of a writ would necessarily mean that the order of deportation would be suspended. On the other hand, the powers of the Court of Appeal could also be invoked to stay the execution of the order until the final determination of the application.

80. The provisions of extradition treaties are also subject to the legal procedures set out in Extradition Law No. 8 of 1977. Under the provisions of the Extradition Law the High Court, having heard any evidence tendered in support of the request for the extradition or on behalf of the person to be extradited, commits the person to await his extradition on an order for extradition, unless such committal is prohibited by any other provision.

81. A person committed to await extradition is entitled to make an application to the Court of Appeal for a mandate in the form of a writ of habeas corpus. The draft bill, which has been approved by the Cabinet, to give effect to the provisions of the Convention against Torture, and Other

Cruel, Inhuman and Degrading Treatment or Punishment has provided for extradition of a person alleged to have committed an offence under the Convention if the person is not prosecuted in Sri Lanka.

Article 14

82. Article 14 of the Covenant states, inter alia, that all persons are equal before a court or tribunal, that everyone is entitled to a fair and public hearing, that the press and the public may be excluded for reasons of morals etc. and that everyone charged with a criminal offence shall be presumed innocent until proved guilty, etc.

83. Article 12 of the Constitution of Sri Lanka, provides that all persons are equal before the law and are entitled to the equal protection of the law. Article 13 (1) of the Constitution requires that a person arrested shall be informed of the reason of his arrest, and article 13 (3) of the Constitution gives him a right to be heard in person or through an attorney-at-law at a fair trial by a competent court. Under article 13 (5) of the Constitution a person shall be presumed innocent until he is proved guilty. Presumption of innocence is a cardinal principle in the criminal law of Sri Lanka, which requires the guilt of a person in a criminal case to be proved beyond reasonable doubt.

84. The law provides for the accused person to be informed of the charge or indictment against him in one of the national languages that he understands and also to have the benefit of translation into the language of his choice. If an accused person opts to be tried by a jury, he can also decide to select the jury based on language criteria. While sufficient time for preparation is granted, courts in Sri Lanka allow the case to be heard on dates suitable to counsel appearing for the defence.

85. Article 106 of the Constitution of Sri Lanka provides for public sittings for every court or tribunal. The judge has the discretion to exclude from the hearings those not directly concerned in proceedings pertaining to family relations, sexual matters or in the interest of national security or of order in the precincts of the court. Article 24 of the Constitution deals with the language of the courts and article 24 (3) of the Constitution provides for an interpreter so that the accused may understand and participate in the proceedings.

86. Under the criminal law of Sri Lanka nothing is an offence which is done by a child under eight years of age. Further, the Penal Code stipulates that nothing is an offence which is done by a child above 8 years of age and under 12 years who has not attained sufficient maturity of understanding to judge the nature and consequence of his conduct on that occasion.

87. Under section 48 of the Prisons Ordinance of Sri Lanka juveniles are required to be separated from adults, wherever practicable. The Children's and Young Persons Ordinance of Sri Lanka provides for the establishing of juvenile courts and lays down special procedures to be followed in such courts. Under article 127 of the Constitution of Sri Lanka, any person convicted has a right of appeal to the Court of Appeal in the first instance and thereafter to the Supreme Court. Chapter 18 of the Criminal Procedure

Code of Sri Lanka states that no person may be tried twice for the same offence. Provision is made for review of conviction and sentence by a higher court when new facts come to light after conviction or sentence. Section 24 of the Evidence Ordinance of Sri Lanka states that a confession obtained by inducement, threat or promise is inadmissible in a court of law.

88. The Legal Aid Law No. 27 of 1978 provides for the granting of legal assistance to deserving persons and for that purpose establishes the Legal Aid Commission and the Legal Aid Fund. At the trials in high courts and appeals in the courts of appellate jurisdiction, the accused is questioned as to whether he/she will retain counsel or whether the services of an assigned counsel are required.

89. If the services of an assigned counsel are requested, the court assigns a counsel who will be paid by the Government. Further, the Bar Association of Sri Lanka, with funds received from foreign governments and foreign non-governmental organizations, provides counsel to accused persons, when such a request is made by the defendant.

90. The Criminal Procedure Code of Sri Lanka provides for the accused to be furnished with statements of witnesses, depositions of witnesses and also copies of documents to accused persons in offences triable before a High Court. All accused persons are entitled to copies of the first complaint of any offence. All accused persons or counsel appearing on behalf of the accused persons are entitled to address court and examine witnesses. The criminal law of Sri Lanka provides the safeguard that no person who has been convicted or acquitted would be subsequently tried for the same offence. This is specifically stated in Chapter 18 of the Criminal Procedure Code.

Article 15

91. Article 15 of the Covenant states that, a person shall not be held guilty of a criminal offence on account of any act or omission which was not an offence at the time that it was committed, but this should not prejudice the trial and punishment of a person for an act or omission committed which was criminal according to international law.

92. Article 13 (6) of the Constitution of Sri Lanka specifically provides against retroactive legislation except where such legislation is to give effect to an act which was criminal according to the general principles of law recognized by the community of nations.

Article 16

93. Article 16 of the Covenant provides that everyone has a right to recognition everywhere as a person before the law.

94. Article 12 (1) of the Constitution of Sri Lanka states that all persons are equal before the law and are entitled to the equal protection of law.

Article 17

95. Article 17 of the Covenant stipulates that no one shall be subjected to arbitrary interference with his privacy, family or home and that everyone has a right to protection against such interference.

96. The Civil and Criminal Procedure Codes of Sri Lanka state that no one can be arrested or his/her home searched otherwise than in accordance with the due process of law.

Article 18

97. Article 18 of the Covenant states that everyone has the right to freedom of thought, conscience and religion, and the freedom to manifest one's religion, and that the State shall respect the liberty of parents to ensure the religious and moral education of their children in conformity with their convictions.

98. Article 10 of the Constitution of Sri Lanka provides for the right to adopt and practise a religion of one's choice. It states that everyone is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice.

99. The same right is guaranteed under article 14 (1) (e) of the Constitution which provides for the freedom to manifest one's religion or belief in worship, observance, practice and teachings.

100. While the rights conferred under article 10 are not subject to any restriction, certain restrictions are permitted with respect to the rights under article 14 and, accordingly, article 15 (7) of the Constitution provides for restrictions prescribed by law in this area in the interest of national security, public order and the protection of public health or morality or for the purpose of securing due recognition and respect for the rights and freedoms of others, etc.

Article 19

101. Article 19 of the Covenant calls upon States to recognize the right of everyone to freedom of expression and the right to hold opinions without interference. Freedom of expression however, may be subject to certain restrictions necessary to protect the rights or reputation of others and in the interest of national security, public order or public health. Article 10 of the Constitution of Sri Lanka states that every person is entitled to freedom of thought and article 14 (1) of the Constitution provides for freedom of speech and expression, including publication. Consistent with the Covenant, the Constitution provides for restrictions to be provided by law for the purposes of inter alia, securing due recognition and respect for the rights and freedoms of others.

Article 20

102. Under article 20 of the Covenant any form of propaganda for war is prohibited. Further, any advocacy of national, racial or religious hatred is prohibited.

103. Article 28 of the Constitution of Sri Lanka states that it is the duty of every person to defend the Constitution and the law and to further the national interest and to foster national unity.

104. Under the Penal Code of Sri Lanka, the Prevention of Terrorism (Temporary Provisions) Act and the Emergency (Miscellaneous Provisions and Powers) Regulations, advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence are offences.

Article 21

105. Article 21 of the Covenant calls upon States to recognize the right of peaceful assembly. It also states that restrictions on this right may be imposed by law in the interest of national security or public safety.

106. This freedom is ensured under article 14 (1) (b) of the Constitution of Sri Lanka, which states that every person is entitled to the freedom of peaceful assembly. Consistent with the provisions of the Covenant there is provision in the Constitution for restrictions on this right, imposed in conformity with the law, which are necessary in a democratic society in the interest of national security or public safety, public order, the protection of public health or morals or the protection of rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society.

Article 22

107. Article 22 of the Covenant states that everyone shall have the freedom of association, including the right to form and join trade unions, and that restrictions may be placed by law in the interest of national security or public safety.

108. Under the terms of article 14 (1) (c), (d) and (g) of the Constitution of Sri Lanka every citizen is entitled to the freedom of association, freedom to join a trade union, and freedom to engage in any lawful occupation or trade. Restrictions to these rights are permissible only in the interest of public security or public order etc.

Article 23

109. Article 23 of the Covenant states that the family is the natural and fundamental group unit of society, that the right of men and women of marriageable age to marry shall be recognized, that no marriage shall be entered into without consent, and that the State should ensure equality of rights and responsibilities of spouses in matters relating to marriage and its dissolution.

110. Article 27 (12) of the Constitution of Sri Lanka states that it is the fundamental duty of the State to protect the family as the basic unit of society.

111. There are several personal laws relating to marriage, covering the particular community to which one belongs. Under the Muslim Marriage and Divorce Act it is not necessary to obtain in writing the consent of a Muslim bride. This Act is a codification of customary Muslim laws and practices.

112. Other aspects relating to marriage and the rights and responsibilities of spouses with regard to children are dealt with under special laws and regulations. Sri Lanka is a State party to the Convention on the Rights of the Child and a comprehensive Children's Charter has been adopted as a policy document, to give effect to Sri Lanka's obligations under the Convention.

Article 24

113. Article 24 of the Covenant states that every child has the right to protection owing to his status as a minor, that every child shall be registered and shall have a name, and that every child has the right to acquire a nationality.

114. Article 27 (13) of the Constitution of Sri Lanka requires that the State shall promote with special care the interests of children and youth, so as to ensure their full development and to protect them from exploitation and discrimination.

115. Under the laws in Sri Lanka relating to the registration of births, the birth of every child is required to be registered. A child born in Sri Lanka has the status of a citizen if his father was a citizen at the time of birth. A foundling is considered a citizen, while in the case of children born out of wedlock, citizenship devolves from the mother.

116. The Government of Sri Lanka has implemented a continuous programme to provide care and protection to the categories of children who are orphaned, abandoned, destitute and abused. The Government has also spent Rs. 28 million during the past year on the Children's Homes Programme. In addition, several significant steps have been taken in the field of legal reforms and policy formulation during the past two years. The Government has laid emphasis on preventive measures to avoid situations that are detrimental to children. Recommendations have been finalized by a technical committee to amend all the laws pertaining to children that need revision. A comprehensive action plan covering all the fields concerning children has also been launched to combat situations in which children become victims.

Article 25

117. Article 25 of the Covenant provides that every citizen has the right to take part in the conduct of public affairs, the right to vote and to be elected, and to have access to the public service.

118. The public service is accessible to all citizens of Sri Lanka. Articles 4, 88, 90 and 93 of the Constitution of Sri Lanka guarantee the franchise to citizens of Sri Lanka, while article 12 of the Constitution provides that there shall be no discrimination on grounds of race, sex, etc. Every citizen above the age of 18 years and who is qualified to be an elector is entitled to exercise the right of franchise. Every person qualified to be an elector is also qualified to be elected, subject to certain disqualifications stipulated in article 89 of the Constitution. It is stated in article 93 of the Constitution that elections shall be free, equal and by secret ballot. Since attaining independence, Sri Lanka has held regular elections - resulting in frequent changes of government - which have been widely accepted as free and fair.

Article 26

119. Article 26 of the Covenant states that all persons are equal before the law.

120. Article 12 (1) of the Constitution of Sri Lanka guarantees equality before the law and prohibits discrimination on any ground.

Article 27

121. Article 27 of the Covenant states that ethnic, religious or linguistic minority groups shall not be denied their right to enjoy, to profess, and to practise their own culture, religion or language.

122. The Constitution of Sri Lanka prohibits all forms of discrimination. Under article 10 of the Constitution of Sri Lanka every person is entitled to freedom of thought, conscience and religion. Minority groups are given further protection under article 27 (5) of the Constitution, which states that the State shall strengthen national unity by promoting cooperation and mutual confidence among all sections of the people of Sri Lanka, including the racial, religious, linguistic and other groups, in order to eliminate discrimination and prejudice.

List of documents 1/

(i) The Constitution of the Democratic Socialist Republic of Sri Lanka (1978) with amendments.

(ii) Government of Ceylon legislative enactments Penal Code (1956 Revision).

(iii) Government of Ceylon legislative enactments Prisons Ordinance (1956 Revision).

(iv) Government of Ceylon legislative enactments Citizenship Act (1956 Revision).

(v) Government of Ceylon legislative enactments Births and Deaths Registration Act (1956 Revision).

(vi) Government of Ceylon legislative enactments Children and Young Persons Ordinance (1956 Revision).

(vii) Government of Ceylon legislative enactments Youthful Offenders (training schools) Ordinance (1956 Revision).

(viii) Code of Criminal Procedure Act No. 15 of 1979.

(ix) Parliamentary Commissioner of Administration Act No. 17 of 1981.

(x) Abolition of Slavery Ordinance No. 20 of 1844.

(xi) Immigrants and Emigrants Acts (Nos. 20 of 1948 and 16 of 1955).

(xii) Children's Charter.

(xiii) Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979.

(xiv) Prevention of Terrorism (Temporary Provisions) (Amendment) Act No. 10 of 1988.

(xv) Prevention of Terrorism (Temporary Provisions) (Amendment) Act No. 22 of 1988.

(xvi) Emergency (Miscellaneous Provisions and Powers) Regulations No. 1 of 1993.

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1/ These documents are available for consultation in the archives of the secretariat.